



Persons' Importing Out-of-State Beverage Container Materials – Workshop #2

November 19, 2012



AGENDA

- CA Beverage Container Recycling Program – Out-of-State (OOS) UBC Importation / Illegal CRV Redemption
 - Legislative Intent / Existing Statutes
 - Issue / Problem Overview
 - Background:
 - CDFA OOS Beverage Container Monitoring Program
 - AB 1933 – Changes to PRC 14596
 - Review and Discuss OOS UBC Importation – Reporting & Inspection Scenarios & Proposed Elements
 - Overview - DOR Fraud Management Approach / Functional Activities



PRC - DIVISION 12.1, CHAPTER 8.5

➤ Legislative Intent (PRC Section 14595):

- The Legislature finds & declares that the redemption of beverage container material imported from out of state,...presents a significant threat to the integrity of the beverage container recycling program.
- Intent of the Legislature that no refund value or other recycling program payments be paid to any person for this material.



PRC - DIVISION 12.1, CHAPTER 8.5

➤ Legislative Intent (PRC Section 14595):

- Intent of the Legislature that any person participating in conduct intended to defraud the state's beverage container recycling program shall be held accountable for that conduct.



PRC - DIVISION 12.1, CHAPTER 8.5

- **Public Resources Code 14595(a)(2) - No person shall, with intent to defraud, do any of the following:**
- (A) Redeem or attempt to redeem an out-of-state container, rejected container, line breakage, previously redeemed container, or other ineligible material.
 - (C) Bring an out-of-state container, rejected container, line breakage, or other ineligible material to the marketplace for redemption.
 - (D) Receive, store, transport, distribute, or otherwise facilitate or aid in the redemption of a previously redeemed container, out-of-state container, rejected container, line breakage or other ineligible material.



ISSUE / PROBLEM OVERVIEW

- **Based upon observations made by DOJ, local law enforcement agencies and CalRecycle investigators, unscrupulous individuals and entities routinely...**
 - Purchase and/or collect OOS used beverage containers (UBCs) in large quantities in Arizona, Nevada, New Mexico, etc.
 - Ship them loose into CA, typically to a designated location(s) and break down loads into quantities just below the daily load limits and/or just below 250 AL reporting threshold
 - Transport loads of loose OOS UBCs to certified recycling centers throughout CA. Representing themselves as a CA consumer or some type of 'collector' and attempt to illegally redeem for CRV



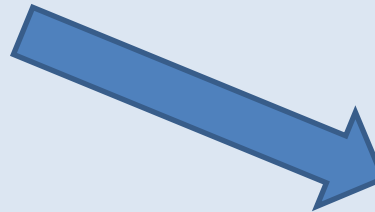
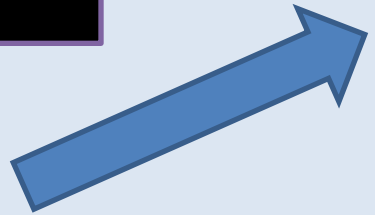
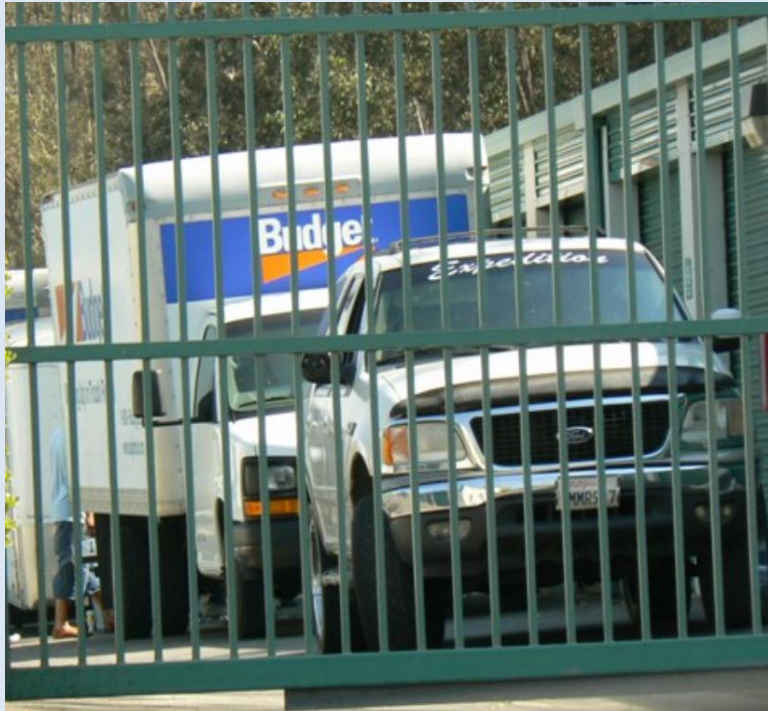






Out-of-State Loads that made it into CA

- Material stored at public storages
- Split into smaller loads
- Sold for CRV







CALRECYCLE / CDFA PARTNERSHIP

- Baseline data from 2011 pilot program used to secure funding for CDFA resources to survey, monitoring and inspection activities
- Vehicle data and load information is currently being captured at all 16 CDFA Plant Quarantine Inspection Stations and is being submitted to CalRecycle on a daily basis
- CalRecycle aggregates and analyzes data and provides a report to CDFA and DOJ on a regular basis
- Interagency agreement in place and runs through FY 14/15



CALRECYCLE / CDFA PARTNERSHIP

- CalRecycle, CDFA and DOJ comprise the working team that is developing the draft reporting and inspection regulations to implement PRC 14596(a) & (b)
- Developing FSR for potential IT project to formalize data collection and transfer between CDFA, CalRecycle and state and local law enforcement agencies



AB 1933 - LEGISLATIVE CHANGES

➤ PRC Section 14596 (a)

- Any person importing more than **25 pounds** of aluminum, bimetal, or plastic beverage container material, or more than **250 pounds** of glass beverage container material, into the state, shall report the material to the department and provide the department with all the following:



AB 1933 - LEGISLATIVE CHANGES

➤ PRC Section 14596 (a)

- Documentation on the source of the material.
- Documentation on the destination of the material.
- Any other information deemed necessary by the department as it relates to the importation of empty beverage container material
- An opportunity for inspection, in accordance with the regulations adopted by the department



AB 1933 - LEGISLATIVE CHANGES

➤ PRC Section 14596 (b)(1)(A)

- In addition to inspections required by the regulations adopted by the department pursuant to subdivision (a), a vehicle entering the state that contains more than 25 pounds of empty beverage container material shall pass through the nearest plant quarantine inspection station maintained pursuant to Section 5341 of the Food and Agricultural Code, and shall obtain proof of inspection from the department.

50 lbs. Aluminum UBCs (loose)





REPORTING & INSPECTION

➤ Objectives:

- Document all imported OOS UBC material entering CA
- Reporting & inspection should be concise, efficient and measurable
- Reporting functionality is available prior to importation of OOS UBC material into CA
- Provide simplified / expedited OOS reporting & inspection process for legitimate commercial importation of OOS UBC material into California



REPORTING & INSPECTION

➤ Objectives:

- Verify the final disposition / 'ship to' location in CA for imported OOS UBC material
- Verify that CRV is **not paid** for imported OOS UBC material
- Define authority and develop procedures to interdict and evaluate imported OOS UBC materials in transit inside CA



REPORTING & INSPECTION

➤ Objectives:

- Develop reporting requirements for recycling center operators who receive/purchase OOS UBC material
- Develop documentation and analysis of reported data for use in supporting enforcement efforts
- Develop authority and reporting requirements for bona-fide end users who receive OOS UBC material



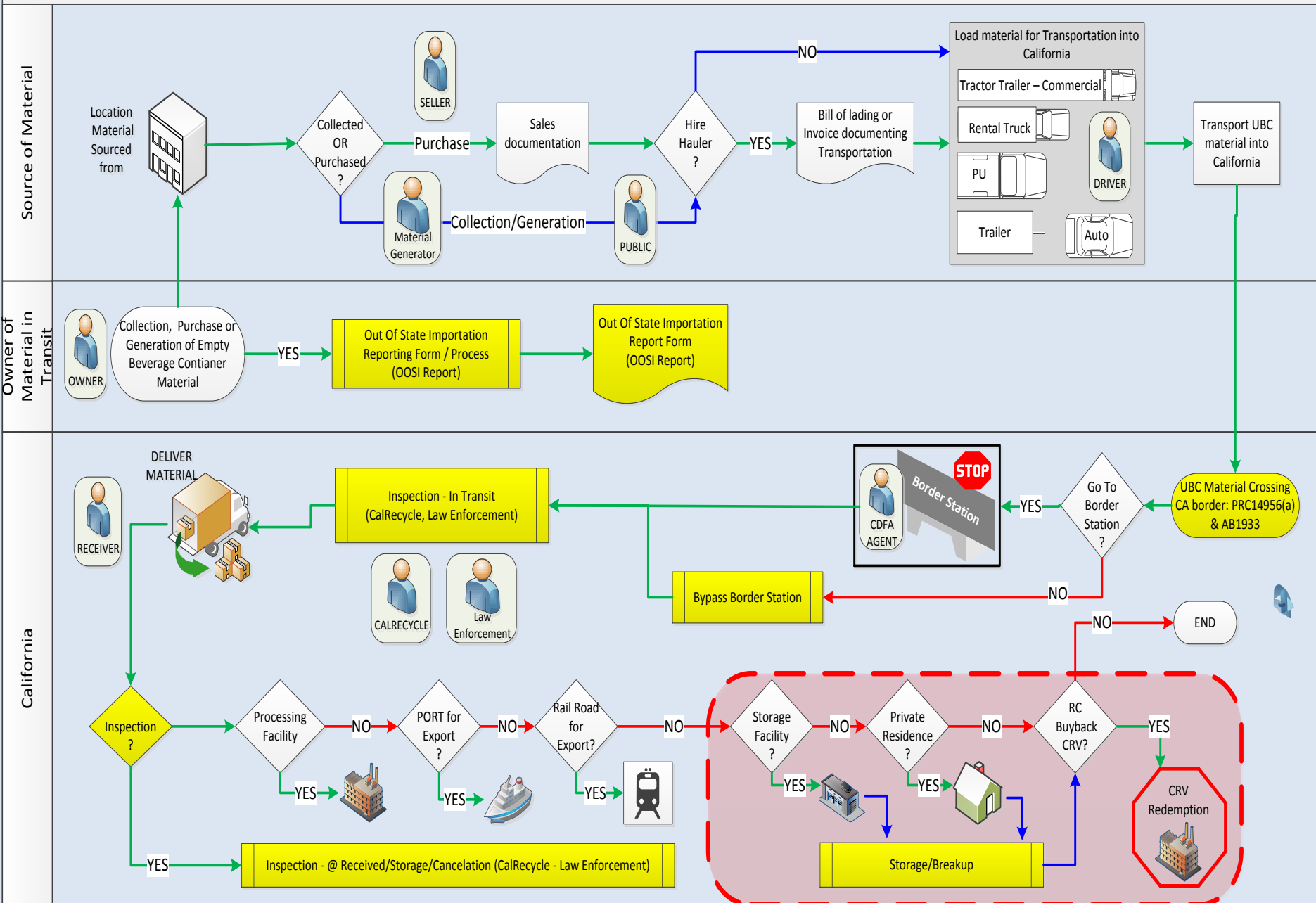
REPORTING & INSPECTION

➤ **Seven primary components of the OOS UBC importation reporting & inspection model:**

1. Material
2. Source
3. Ownership
4. Reporting Process
5. Transportation
6. Destination
7. Enforcement / Compliance / Inspection

Model of Out Of State Importation of Empty Beverage Containers (PRC 14956(a) and AB 1933)

Phase





REPORTING & INSPECTION

➤ Assumptions:

- All applicable vehicles must pass through a CDFA border station
- Report forms will be required to be completed & inspections of vehicles will be performed
- OOS empty beverage container material importers will have the opportunity/availability to complete a report form prior to entering the state of California
- Vehicles / individuals will be given the opportunity to pullover and complete a report form and provide the completed report form to a CDFA agent



REPORTING & INSPECTION

➤ Assumptions:

- Vehicles transporting over statutory thresholds for OOS beverage container material will be restricted from entering CA if they refuse to allow inspection of vehicle
- CDFA will inform state and/or local law enforcement of drivers that refuse to provide a completed report form
- Bypassing a CDFA border station can result in administrative penalties. Misdemeanor for multiple violations within specified time period



REPORTING & INSPECTION

➤ Assumptions:

- Completed & authorized report forms will be required to remain with the OOS empty beverage container material until delivered to designated/reported destination
- The reporting form will contain boiler plate legal language / affidavit and will signed by the driver importing OOS UBCs



REPORTING & INSPECTION

➤ Assumptions:

- Data captured on report form will be routinely provided to State or local law enforcement as support for the investigations and prosecutions of individuals and/or entities illegally redeeming OOS beverage container materials for CRV



REPORTING & INSPECTION

➤ Assumptions:

- Refusal to allow vehicles with OOS UBCs to enter CA if they refuse to allow for an inspection does not violate the US constitution (i.e.,commerce clause)



REPORTING & INSPECTION

➤ Assumptions:

- Aluminum UBCs imported into California are scrap metal covered by Business and Professions Code 26100 as a nonferrous metal. As such, these containers are not covered by the Act and regulations as they pertain to the reporting and payment of CRV beverage containers
- State and local law enforcement can enforce Business & Professions Codes as they pertain to the transport and sale of nonferrous aluminum materials



REPORTING & INSPECTION

- **Proposed Methodology for Tier Based Reporting based upon volume of OOS UBC material:**
 - **TIER 1**: 25 to 100 lbs. – Passenger vehicles with or without a trailer
 - **TIER 2**: > 100 lbs. to CA state maximum for a two axle vehicle
 - **TIER 3**: > CA state maximum for a two axle vehicle to CA state maximum vehicle load
 - **TIER 4**: Registered Importer – registered with CalRecycle



REPORTING & INSPECTION

- **Proposed methodology for tiered reporting based upon physical disposition of OOS UBC material:**
 - **TIER 1: Processed OOS UBC materials**
 - Aluminum - baled or densified based upon defined specifications
 - Plastic – shredded, flaked, baled based upon defined specifications
 - Glass – crushed to uniform size, acceptable without further processing based upon defined specifications
 - **TIER 2: Loose / Unprocessed OOS UBC materials**



DISCUSSION AND FEEDBACK



NEXT STEPS

- Project Team will review & analyze feedback received during this workshop for consideration in developing draft regulations
- CalRecycle / Project Team will draft proposed regulations
- CalRecycle will provide all interested parties an opportunity to review draft proposed regulations / reporting forms at a future public workshop in advance of CalRecycle formally promulgating regulations to implement PRC 14596(a) & (b)

A collage of recycling materials including a blue soda can, a clear plastic bottle, and a green plastic bottle, all with their caps removed, set against a light blue background with a diagonal white stripe.

CONTACT INFORMATION

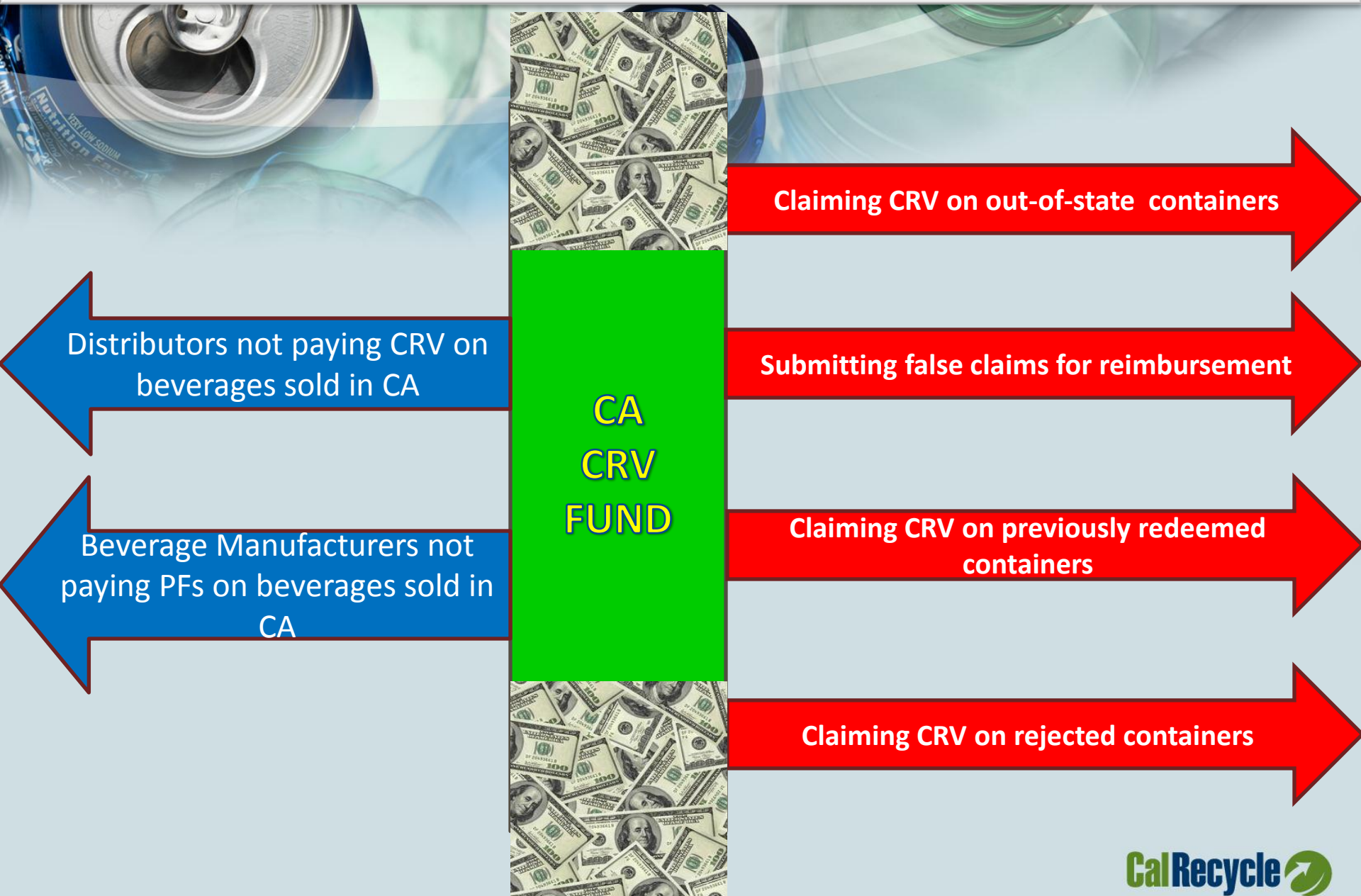
- Via email @ recyclingworkshops@calrecycle.ca.gov
- Via Phone: Recycling Program Enforcement Branch
 - (916) 324-5392
 - Ask for John Halligan or Victor Lum



FRAUD MANAGEMENT APPROACH

- **Overview - Beverage Container Recycling Program (BCRP) Fraud**
- **Overview – DOR's Fraud Management Approach / Functional Activities**

Common Fraud Schemes





OVERVIEW – BCRP FRAUD

➤ Ineligible Materials Related Fraud:

- Paying/Claiming CRV on OOS UBCs
- Claiming CRV on Previously Redeemed Containers,
- Claiming CRV on Line Breakage / Rejected Materials



OVERVIEW – BCRP FRAUD

- **CRV Payment/Reimbursement Related Fraud:**
 - Failure to Pay CRV/Processing Fees on CRV Beverages Sold/Distributed in CA
 - Paying/Claiming CRV on Using Incorrect Basis
 - Underpaying CRV then Claiming Higher CRV Reimbursement
 - Short-Weighing Loads of CRV



OVERVIEW – BCRP FRAUD

➤ Falsified Records Related Fraud:

- Unsubstantiated Claims
- Falsifying Consumer Transactions, Shipping Reports, Handling Fee Applications and/or Processor Invoices
- Falsifying / Overstating Purchase Volumes to Secure Larger Percentage of Subvention Payments



FRAUD MANAGEMENT APPROACH

GAO

United States General Accounting Office

Executive Guide

October 2001

STRATEGIES TO MANAGE IMPROPER PAYMENTS

Learning From Public
and Private Sector
Organizations

FRAUD MANAGEMENT APPROACH

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A collage of recycled plastic bottles and a soda can, illustrating the theme of recycling and sustainability.

FRAUD MANAGEMENT APPROACH

- The Fraud Management Lifecycle Theory: A Holistic Approach to Fraud Management
 - Malcolm Sparrow, Professor Professor of Practice of Public Management
 - Faculty Chair of the Executive Program on Strategic Management of Regulatory and Enforcement Agencies
 - Harvard / Kennedy School of Government
 - Fraud management strategy used at CA Department of Health Care Services



FRAUD MANAGEMENT APPROACH

➤ Deterrence & Prevention

- Actions/activities intended to stop or prevent fraud before it is attempted.

➤ Detection

- Actions/activities used to identify and locate fraud prior to, during and subsequent to the completion of the fraudulent activity



FRAUD MANAGEMENT APPROACH

➤ Mitigation

- Stop losses from occurring or continuing to occur and/or hinder a fraudster from continuing or completing the fraudulent activity.

➤ Analysis

- Root cause analysis to determine the factors associated with specific loss situations (i.e., root cause analysis)

A collage of recycled plastic bottles and a soda can, illustrating the theme of recycling and waste management.

FRAUD MANAGEMENT APPROACH

➤ Policy

- Actions/activities to create, evaluate, communicate and assist in the deployment of policies to reduce the incidence of fraud. (Balancing prudent fraud reduction policies with resource constraints and effective management of legitimate activity is part of this stage/area)



FRAUD MANAGEMENT APPROACH

- **Investigation (Criminal & Administrative)**
 - Obtaining evidence and information to stop fraudulent activity, recover assets or obtain restitution and/or to provide evidence to support successful prosecution and conviction of fraudsters.
- **Prosecution (Criminal & Administrative Remedy)**



CALRECYCLE PARTNERS

- **Department of Justice**
- **CA Attorney General**
- **CDFA**
- **Local Law Enforcement Agencies**
- **CalEPA Departments**
- **Certified and Registered Program Participants**



COMMENTS OR QUESTIONS